

Dear Applicant:

On July 29, 1995, the North Carolina General Assembly ratified Senate Bill 52, "An Act to Amend the Provisions of Chapter 146 Concerning State-Owned Submerged Lands."

The stated purpose of the legislation [North Carolina General Statute [146-12(b)]] is "to establish within the Department of Administration, a method for obtaining easements for state-owned lands covered by navigable waters that includes compensation, recognizes the common law rights of riparian or littoral property owners, and balances those rights with the State's obligation to protect public trust rights for all of its citizens."

North Carolina General Statute 146-12(b) authorizes the Department of Administration to grant easements to adjoining riparian (waterfront) or littoral (waterfront) owners in state-owned lands covered by navigable waters **without** the approval of the Governor and Council of State in the twenty (20) coastal counties subject to the Coastal Area Management Act. Such easements shall be granted for:

- (1) Existing structures permitted under Article 7 of Chapter 113A of the General Statutes (the Coastal Area Management Act, hereinafter referred to as CAMA) or structures existing prior to March 1, 1978, the effective date of CAMA.
- (2) New structures permitted under Article 7 of Chapter 113A of the General Statute on or after October 1, 1995, the effective date of Senate Bill 52.

North Carolina General Statute 146-12(b) establishes two separate classifications or types of easements available to applicants: **Voluntary Easements** for existing structures and **Mandatory Easements** for new or proposed structures. The legislation also exempts certain structures from any requirement for an easement.

Voluntary Easements for structures existing on or before October 1, 1995 are available to riparian or littoral property owners that submit a completed application to the State Property Office. The term "existing structures " means all presently existing piers, docks, marinas, wharves, and other structures located over or upon state-owned lands covered by navigable waters. Applications for such voluntary easements shall be received by the State Property Office on or before October 1, 1998.

Mandatory Easements for new or proposed structures requiring a Coastal Area Management Act (CAMA) permit are available to riparian or littoral property owners that submit a completed application to the State Property Office.

The following types of structures shall not require an easement. However, an easement may be obtained upon submission of a completed application to the State Property Office.

- (1) Piers, docks, or similar structures for the exclusive use of the owner or occupant of the adjacent riparian or littoral property, which generate no revenue directly related to the structure and which accommodate no more than ten vessels;
- (2) Structures constructed by any public utility that provide or assist in the provision of utility service;
- (3) Structures constructed or owned by the State of North Carolina, or any political subdivision, agency, or department of the State, for the duration that the structures are owned by the entity; or
- (4) Structures on submerged lands or lands covered by navigable waters not owned by or for the benefit of the public that have been created by dredging or excavating lands.

In order to obtain an easement from the State, a completed application must be submitted to the State Property Office. The application must include the following information: 1) a copy of the deed or other instrument under which the applicant establishes ownership to the adjacent riparian or littoral land; 2) a site or vicinity map that shows the location of the project site; 3) a copy of any existing survey or county tax map showing or depicting the adjacent riparian or littoral land owned by the applicant; 4) an accurate, dated work plat drawn to scale on 8 1/2 " by 11" white paper depicting the footprint and total square footage of all structures, including mooring pilings located in or over state-owned lands covered by navigable waters; 5) a copy of any current CAMA permit required for new or existing structures under Article 7 of Chapter 113A of the General Statutes; 6) a narrative description of the use or uses associated with either new or existing structures; 7) the easement purchase payment, if applicable.

An easement purchase payment, if applicable, must be paid prior to issuance of the easement. The purchase payment shall be computed on the basis of one thousand dollars (\$1,000.00) per acre of footprint coverage. The procedure for calculating the footprint and required payment allows a "credit" for riparian shoreline based upon the linear feet of shoreline multiplied by a factor of 54. The credit is deducted from the total footprint area and the result rounded up to the nearest quarter acre.

If this calculation results in any fee being owed, the minimum fee shall be \$500.00. For example, if the calculation results in a fee of \$250.00, the required payment is \$500.00.

The easement issued by the State will contain numerous conditions. Upon acceptance of the easement, the easement holder agrees to comply with and be bound by all terms and conditions set forth therein. For further information regarding the terms and conditions, please refer to the sample easement included in this application package as Exhibit C.

Within 75 days of receipt of the completed application, the Director or Deputy Director of the State Property Office shall issue the requested easement. The easement issued to the applicant will be for an initial term of 50 years from the date of issuance. The Easement is eligible for one (1) renewal term of 50 years. The easement will be subject to revocation or termination as referenced therein.

Note: North Carolina General Statute 146-12(g)(2) specifies that the easement contain the following condition: "The holder of the easement shall not exclude or prevent the general public from exercising public trust rights, including commercial and recreational fishing, seine netting, pound netting, and other fishing rights in navigable waters within the easement premises".

North Carolina General Statute 146-12(g)(11) specifies that the easement contain the following condition: "That rights granted include the right to repair, rebuild, or restore existing structures consistent with Article 7 of Chapter 113A of the General Statutes".

An easement application form is attached. If an easement is desired, please complete this form and submit to the State Property Office.

Sincerely,

Director

Application for Easement In State Owned-Submerged Lands

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1. APPLICANT

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a. Landowner(s) (Owners in fee simple of adjacent riparian or littoral land):

Name _____

Address _____

City _____ State _____ Zip _____

Day Phone _____ Fax _____

Note: If the landowner(s) is other than an individual (corporation, partnership, municipality, etc.), please list the name and title of those persons authorized to execute this document on behalf of the owner.

b. Authorized Agent (if any):

Name _____

Address _____

City _____ State _____ Zip _____

Day Phone _____ Fax _____

c. Please check one of the following:

_____ This application covers **existing structures** located over or upon state-owned lands covered by navigable waters constructed or erected prior to March 1, 1978.

_____ This application covers **existing structures** located over or upon state-owned lands covered by navigable waters constructed or erected on or after March 1, 1978.

_____ This application covers **new or proposed structures** to be constructed or erected in state-owned lands covered by navigable waters.

d. Project name (if any) _____

Example: Smith's Marina, Inc.

Note: Easement will be issued in name of the landowner(s).

2. LOCATION OF PROJECT

- a. County _____
- b. City, town, community or landmark _____
- c. Street address or secondary road number _____

- d. Name of body of water where project is located. (e.g. river, creek, sound, bay)

3. DESCRIPTION AND USE OF STRUCTURES

- a. List the type(s) of structure(s) which are proposed or have been constructed (e.g. house, restaurant, motel, marina, bulkhead, pier, etc.) in state-owned lands covered by navigable waters. Please indicate the approximate date(s) when structures were erected or constructed. Also, list the name(s) of owner(s) of existing structures if different from the applicant.

- b. The project is being or will be used for the following purpose: (Please check one).
1. ___ Nonprofit public use: that use performed by a public entity which is not designed to enhance or accommodate a profit-making venture, and is not associated with a revenue generating activity.
 2. ___ Nonprofit private use: that use performed by a private entity which is not designed to enhance or accommodate a profit making venture, and is not associated with a revenue generating activity.
 3. ___ Commercial use: that use performed by public or private entity designed to enhance or accommodate a profit making venture or is associated with a revenue generating activity.

- c. Give a brief description of the use or uses associated with the structure(s) to be covered by an Easement granted from the State. Three examples of uses are set forth below. If more space is needed, please attach additional pages. (**Note: The information provided in this subsection will be incorporated into the Easement. Use of the easement premises for any other purpose will require modification of the Easement.**)
- a. Providing reasonable access for all vessels traditionally used in the main watercourse area to deep water or, where present, to a specified navigational channel;
 - b. Mooring vessels at or adjacent to the structure.
 - c. Enhancing or improving the value of the adjacent riparian or littoral property.
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4. ADDITIONAL INFORMATION
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In order for your application to be complete, the following items must be submitted:

- **A copy of the deed** or other instrument under which the applicant establishes ownership to the adjacent riparian or littoral land. This information can be obtained from the Register of Deeds Office or the Clerk of Courts Office in the county wherein the land is located.
- **A site or vicinity map** that shows the location of the project site. A copy of a city, county or state roadway map will be acceptable.
- **A copy of any existing survey and tax map, if available in the county wherein the adjacent riparian land is located**, showing or depicting the adjacent riparian or littoral land owned by the applicant. The tax map can be obtained from the tax office in the county wherein the land is located.
- **An accurate, dated work plat** drawn to scale in black ink on 8 1/2" by 11" white paper that shows or depicts the following information:
 - a. The mean high water line and the linear feet of riparian shoreline utilized in calculating the riparian credit referenced in section 5 of this application.

- b. The footprint and total square footage of all structures, including mooring pilings, located in or over state-owned lands covered by navigable waters. **THE FOOTPRINT SHALL INCLUDE (AND THE WORK PLAT MUST REFLECT) THE TOTAL SQUARE FOOTAGE OF THE AREA OF STATE-OWNED LANDS COVERED BY NAVIGABLE WATERS THAT ARE ENCLOSED ON THREE OR MORE SIDES BY ANY STRUCTURE.** The dimensions of all structures located in or over state-owned lands **must** be depicted on the plat.

Note: Examples of plats showing structures located in or over state-owned submerged lands are provided to assist you in determining the footprint area. See attached Exhibits A and B.

- c. **The owners name and project name**, if any, and the recordation information (e.g., Deed Book and Page, Will Book and Page) of the instrument through which the applicant establishes ownership to the adjacent riparian or littoral land.
- d. **The north arrow and scale** used in drawing the plat. If the applicant is unable to depict the required information on one (1) sheet of 8 1/2" by 11" white paper, include additional sheets with appropriate match lines. A legible, copy of a larger plat reduced to 8 1/2" by 11" on white paper, which includes a scale, will also acceptable.

Note: The work plat will be attached to and incorporated by reference to the Easement granted by the state. Therefore, it is essential that the required information depicted or shown on the plat be legible and accurate.

- **A copy of any required CAMA Permit** authorizing construction or erection of new or existing structures, if the structure(s) were constructed or erected on or after March 1, 1978.

If the structures were constructed or erected after March 1, 1978, and applicant is unable to include a copy of the required CAMA permit, an easement will be issued only if the Division of Coastal Management (DCM) certifies:

- (1) A CAMA permit was issued for such structure(s); or
- (2) The structure(s) could have been permitted under CAMA development standards in effect at the time the structure(s) were erected; and there are no outstanding or unresolved matters relating to a Notice Of Violation (NOV) or civil penalty assessment issued by the Division of Coastal Management regarding such structures.

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**5. EASEMENT PURCHASE PAYMENT
CALCULATION**

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Please check one of the following:

I have calculated the easement purchase payment following the procedure referenced in this section and no payment is required.

___ I have calculated the easement purchase payment following the procedure referenced in this section and enclosed is my check in the amount of \$_____ made payable to the **NC Department of Administration**. I understand that if additional monies are owed, the **State Property Office** will bill me prior to issuance of the Easement. I further understand that I will receive a refund for any overpayment made.

___ Please calculate the easement purchase payment for me. I understand that I will be billed (if any payment is due) prior to issuance of the Easement.

Note: This application will be considered incomplete until any easement purchase payment owed is received by the State Property Office.

To calculate the easement purchase payment, please follow the procedure listed below:

1. Determine from the work plat the total footprint area (in square feet) covering state-owned submerged lands.

Example: Total footprint area is 76,750 square feet.

2. Determine the riparian credit by multiplying the linear feet of riparian shoreline times 54 feet.

Example: 380 Linear feet of riparian shoreline x 54 feet = 20,520 square feet.

Note: No linear feet of shoreline may be used in computing the riparian credit if that area of shoreline has been the basis of a previous credit. Any excess shoreline credit not previously used may be applied as a credit against future expansion of the footprint area.

For purposes of determining the linear feet of shoreline owned, an application submitted by a corporation or other entity whose members include riparian or littoral lot owners, which owner(s) have the right to use the structure for which the easement is sought, and whose lots are restricted from construction thereon of other structures for similar use, shall be considered an application whose easement purchase payment shall be determined by using the entirety of such use restricted shoreline for purposes of determining applicable riparian credit.

3. Subtract the riparian credit from the total square feet of footprint area to determine the area subject to an easement purchase payment.

Example: 76,750 sq. ft. - 20,520 sq. ft. (riparian credit) = 56,230 sq. ft. which is the chargeable area.

Note: If the riparian credit exceeds the total footprint area, stop here. No easement purchase payment is required.

4. Divide the area subject to the easement purchase payment (from 3. above) by 43,560 sq. ft. to determine acreage and round up to next quarter acre.

Example: 56,230 sq. ft. / 43,560 sq. ft. = 1.29 acre rounded up to 1.50 acre

5. Determine the easement purchase payment by multiplying \$1,000 times the footprint coverage (in acres).

Example: \$1,000 x 1.50 acre = \$ 1,500.00 (total easement purchase payment).

Note: In the event an easement purchase payment is owed, the minimum payment shall be \$500.00.

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**6. CERTIFICATION AND PERMISSION
TO ENTER LAND**

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I understand that any Easement issued in response to this application will allow only the structures and use(s) described in this application. The structure(s) and use(s) will be subject to the conditions and restrictions contained in the Easement.

I hereby grant permission to state agencies to enter the aforementioned lands in connection with evaluating information related to this application and follow-up monitoring of the project.

I certify that the information provided in this application is accurate and truthful to the best of my knowledge.

This is the _____ day of _____, 19 _____.

Signature _____

Landowner(s)

Signature _____

Authorized agent, if applicable

Submit application to:
NC Department of Administration
State Property Office
Attention: Director / Deputy Director
116 West Jones Street
Raleigh, North Carolina 27603-8003

EXHIBIT C

STATE OF NORTH CAROLINA

COUNTY OF _____

EASEMENT

THIS EASEMENT, hereinafter referred to as Easement, made and entered into this the _____ day of _____, 199____, by and between the STATE OF NORTH CAROLINA, a body politic and corporate, (GRANTOR) and _____, (GRANTEE).

WITNESSETH:

THAT, WHEREAS, the North Carolina Department of Administration has authorized and approved the execution of this instrument for the purposes herein expressed; and,

NOW, THEREFORE, in consideration of the public interest in promoting citizen access to navigable waters and for good and valuable consideration, the Grantor does hereby grant unto Grantee, _____ heirs and assigns, an easement located in _____ Township _____ County, North Carolina, and more particularly described as follows:

[DESCRIPTION]

The terms and conditions on and for which this Easement is granted are as follows:

1. This Easement is appurtenant to and runs with the adjacent riparian or littoral land described as follows:

[DESCRIPTION]

2. Grantee shall not exclude or prevent the general public from exercising public trust rights, including commercial and recreational fishing, shell fishing, seine netting, pound netting, and other fishing rights in navigable waters within the easement premises.

3. This Easement confers upon Grantee no additional rights to interfere with the approval, issuance, or renewal of shellfish or water column leases or to interfere with the use or cultivation of existing shellfish leases, water column leases, or shellfish franchises.

4. This Easement is subject to all rights conferred in previous conveyances by the Grantor.

5. This Easement is granted for a term of fifty (50) years beginning on _____, and terminating on _____, unless earlier revoked.

6. Subject to compliance with North Carolina General Statute 146-12(j), this Easement is eligible for renewal for one (1) additional fifty-year term.

7. (a) This Easement covers existing structures located upon the easement premises. Such structures shall be used for the following purpose(s): _____.

[This provision will be used for existing structures - pre CAMA or post CAMA, when no permit can be located.]

[or]

(b) This Easement covers those structures allowed by CAMA Permit No. _____. Such structures shall be used for the following purpose(s): _____.

All terms and conditions of CAMA Permit No. _____ are hereby incorporated and made a part hereof.

[This provision will be used for all new and existing projects with CAMA Permits]

8. Subject to compliance with Article 7, Chapter 113A of the North Carolina General Statutes, Grantee shall have the right to repair, rebuild or restore structures located upon the easement premises.

9. The exercise of the rights under this Easement shall be contingent upon Grantee obtaining all necessary permits and authorizations and complying with all federal, state, municipal and other laws, codes, ordinances, rules and regulations applicable to the easement premises. Grantee shall not make or permit any unlawful use of the easement premises.

10. As further consideration for granting this Easement, Grantee agrees to pay to Grantor an easement purchase payment in the amount of \$_____.

The easement purchase payment has been calculated based upon the following information:

1. Footprint of structure: _____ square feet
2. Riparian shoreline: _____ linear feet
3. Riparian credit: _____ square feet

11. Grantee shall not exercise any rights granted herein in any areas outside the easement premises without first obtaining a written modification of this Easement in accordance with North Carolina General Statute 146-12(k).

12. Upon transfer of title of the adjacent riparian or littoral property described in Paragraph 1 during the term of this Easement or any renewal thereof, the easement rights conveyed herein shall be transferred automatically to the subsequent owner of the adjacent riparian or littoral property, subject to the limitations hereinafter set forth. In the event the subsequent owner of such property (1) gives written notification to the State Property Office within twelve months of the date of transfer of title of the adjacent riparian or littoral property accompanied by a copy of the instrument of transfer, and (2) remits the easement purchase payment as provided in North Carolina General Statute 146-12(1), such subsequent owner shall be entitled to receive an easement document transferring to such owner the easement rights granted herein for the remainder of the unexpired easement term. Failure to comply with North Carolina General Statute 146-12(1) shall result in termination of this Easement.

13. It is expressly understood and agreed between the parties hereto that if the Grantee shall neglect to do and perform any matter or thing herein agreed to be done and performed by him, and shall remain in default thereof for a period of 60 days after written notice from Grantor to Grantee calling attention to such default, Grantor, with the approval of the Governor and Council of State, may declare this Easement revoked. Said notice shall be given by certified mail to the Grantee at the address set forth in Paragraph 18 (a) of this Easement. Revocation of this Easement shall entitle Grantee to seek administrative review in accordance with the provisions of Article 3, Chapter 150B of the North Carolina General Statutes.

14. Nothing contained herein shall be construed to prohibit Grantee from granting other persons rights of use of portions of the structures on the easement premises for periods not to exceed the term of this Easement. All rights so granted shall automatically terminate upon expiration or revocation of this Easement.

15. a. All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid and addressed as follows:

Grantor: Director State Property Office
116 West Jones Street
Raleigh, North Carolina 27603-8003

Grantee: _____

Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice.

b. In the event title to the riparian or littoral tract described in Paragraph 1 hereof is transferred subsequent to the date of this Easement, Grantee agrees to give written notification of such transfer of title to Grantor by certified mail at the above address. Such notification shall include:

- (1) A copy of the title transfer document
- (2) The name(s) of the subsequent owner(s) of the riparian tract
- (3) The mailing address (es) of such subsequent owner(s)

16. This Easement shall become effective only upon recordation in the Office of Register of Deeds for _____ County. Grantee shall mail a copy of the recorded Easement to Grantor at the address set forth in Paragraph 17(a).

17. Failure by Grantor to require strict compliance with any term or condition of this Easement shall not be construed as a waiver of Grantor's right to enforce compliance with such term or condition or any other term or condition contained herein.

18. Grantee, by acceptance of this Easement, agrees to comply with and be bound by all terms and conditions set forth herein.

IN TESTIMONY WHEREOF, the STATE OF NORTH CAROLINA has caused this instrument to be executed in its name by the undersigned.

STATE OF NORTH CAROLINA

By _____
Director
State Property Office